

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NOT FOR PUBLICATION

JOHN SIEMIENIEWICZ

Plaintiff,

- versus -

CAZ CONTRACING CORP. (sic), et al.,

Defendants.

ORDER

11-CV-0704 (JG)

JOHN GLEESON, United States District Judge:

I have reviewed Judge Orenstein's Report & Recommendation ("R & R") dated September 21, 2012 (ECF No. 38) and the plaintiff's objection thereto (ECF No. 40). Finding insufficient merit to the objection, the R & R is adopted in full with the single exception described below.

Accordingly, plaintiff's motion for entry of a default judgment is denied and the court instead dismisses the complaint *sua sponte*. However, the plaintiff is hereby granted leave to serve and file an amended complaint alleging facts sufficient to impose FLSA liability against defendants. If plaintiff files an amended complaint that cures the pleading deficiencies, and if defendants again default in this action, the court will also adopt the R & R's calculation of damages in the total amount of \$47,150.52, consisting of awards for \$5,335.88 in unpaid overtime wages; \$29,008.45 for unlawful wage reductions; \$803.25 in spread-of-hours compensation; \$14,122.77 in liquidated damages; \$7,426.05 in prejudgment interest; \$2,454.12 in attorney's fees and costs;¹ and a setoff of \$12,000 for the amount plaintiff has already received in settlement from other defendants.

¹ The court respectfully disagrees with the R & R's reduction of attorney's fees and thus sets counsel's hourly rate at \$375.

Plaintiff is hereby directed to serve a copy of this Order upon defendants at their last known address, and to file proof of service with the court.

So ordered.

John Gleeson, U.S.D.J.

Dated: October 18, 2012
Brooklyn, New York